

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 26, 2001
at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: HB 256, HB 419, HB 151, HB
213, HB 360, HB 434, HB 290,
HB 165

EXECUTIVE ACTION ON HB 256

Discussion:

SEN. DUANE GRIMES explained the bill pertaining to penalty
increases for careless and reckless driving.

Valencia Lane, Legislative Staffer, said the committee passed the bill out and there may be questions in regards to the fiscal note. She handed out amendments **EXHIBIT(jus68a01)**.

SEN. GRIMES asked if this committee had changed the incarceration up to a year. **Valencia Lane** didn't believe the committee had.

SEN. GRIMES said there were concerns of making careless driving equivalent to reckless. He thought they should lower the careless driving penalty.

SEN. STEVE DOHERTY said the bill makes reckless and careless the same in regard to penalties. He questioned the possibility of serious bodily injury. **SEN. JERRY O'NEIL** wondered about reducing the careless driving to \$1000 fine and six months in jail.

SEN. DOHERTY said there was questions relating to the debate from the floor. He said careless citations were handed out more frequently. **Pam Bucy, Assistant Attorney General**, clarified the difference between careless and reckless driving. She said these penalties do not change the point structure.

SEN. GRIMES wondered how the difference applied in the bill. **Pam Bucy** explained reckless requires willful and wanted behavior while careless driving requires more negligent behavior. **REP. CINDY YOUNKIN, HD 28, BOZEMAN**, said the difference deals with someone who would die or be mangled for life. She said this bill looks at the results of the incident, not what caused the incident.

SEN. GRIMES asked about the penalties. **REP. YOUNKIN** said it is up to a year in county jail. She added this would be at the discretion of the judge.

SEN. GRIMES asked about removing the year of incarceration. **REP. YOUNKIN** said she didn't have any problems with the change.

SEN. O'NEIL asked about adding six months in jail or a \$5000 fine for careless. **REP. YOUNKIN** said either way would be appropriate. She thought by eliminating the jail time and/or cutting the fine in half would address the concerns.

SEN. O'NEIL did not want to eliminate jail time for careless driving.

Motion: **SEN. DOHERTY** moved **HB 256 TO AMENDED** by eliminating the jail time and cut the maximum fine in half to \$5,000.

Discussion:

REP. YOUNKIN clarified negligent vehicular homicide is only available if the offender was a D.U.I. **SEN. DOHERTY** didn't think they should put people in jail for being negligent.

Valencia Lane clarified to strike and insert language.

Substitute Motion: **SEN. O'NEIL** made a substitute motion **leaving incarceration up to six months in the amendment.**

Discussion:

SEN. GRIMES responded, he did not believe if the incident was not overly careless it would be appropriate with the penalties. He didn't think it to be criminal. **SEN. O'NEIL** explained an incident where he slid through the intersection due to icy roads.

SEN. HALLIGAN said the civil penalty doesn't mean anything. He said the court could order a restitution under the statute and that is part of the judgement.

REP. YOUNKIN added this bill could pass with amendments and she didn't object to amending. She would like to see penalties less for careless than reckless. She understood the jail time involved and personally would prefer the offender to receive jail time. She mentioned these incidences are at the discretion of the county attorneys and the judge.

SEN. O'NEIL refreshed his substitute motion as to \$5,000 fine and six months in jail with change to the title.

Vote: Substitute motion carried unanimously.

Motion/Vote: **SEN. DOHERTY** moved **HB 256 BE CONCURRED IN AS AMENDED.** Motion carried unanimously 7-0.

{Tape 1; Side B}

EXECUTIVE ACTION ON HB 419

Motion: **SEN. HALLIGAN** moved **HB 419 BE CONCURRED IN.**

Discussion:

SEN. GRIMES asked what sections were struck in this bill. He thought the original bill was broader and it was more exclusive.

Pam Bucy understood the amendments for Fish, Wildlife and Parks dealt with the residency cases to be addressed.

SEN. O'NEIL believed the reason for Fish, Wildlife and Parks involvement dealt with the funding. He thought they would lose their funding if no money went into the budget.

Vote: Motion carried 6-1 with SEN. BISHOP voting no.

EXECUTIVE ACTION ON HB 151

Motion: SEN. DOHERTY moved HB 151 BE CONCURRED IN.

Discussion:

SEN. GRIMES explained the punishments and how they would not be dealing with the same activity.

SEN. DOHERTY said the issues dealt with double jeopardy and the proponents responded accurately. **SEN. O'NEIL** viewed this bill to punish felons by giving additional sentencing.

SEN. DOHERTY mentioned the pre-sentencing investigation for misdemeanors. **SEN. GRIMES** asked how this coordinates with another bill dealing with pre-sentencing investigations. **Valencia Lane** mentioned the other bill and how it was amended.

Vote: Motion carried unanimously 7-0.

EXECUTIVE ACTION ON HB 213

Discussion:

SEN. GRIMES thought this to be a good bill. He was concerned about changing the language of tribunal to court.

Motion: SEN. O'NEIL moved HB 213 BE AMENDED. Adding language on page three, line 18; "if a foreign protection order is not presented a law enforcement officer of this state may, after verifying facts present on the National Crime Information Center to support his/her conclusion, and determine probable cause".

Discussion:

SEN. O'NEIL said his intent was to not allow the law enforcement officer discretion. He was concerned due to an incidence he dealt with where the child was taken away from the parents.

SEN. HALLIGAN didn't think the orders were on the National Crime Information Center. **Pam Bucy** said this bill had been amended in the House and the National Crime Information Center has a field to enter restraining orders.

SEN. HALLIGAN asked if the issue was a foreign judgement. **Pam Bucy** explained how other states are requiring to enter the information into the National Crime Information Center. She said this is what the uniform laws had requested.

SEN. HALLIGAN offered different language to add to **SEN. O'NEIL's** motion. **SEN. O'NEIL** thought if nothing was entered on the National Crime Information Center, he did not want to deal with this bill because it may not provide due process rights.

Pam Bucy refreshed the committee that the purpose behind this bill is to allow law enforcement officers to make probable cause judgements. **SEN. O'NEIL** wondered if by this bill due process rights would not be enforced. He pointed out an incident where this bill did not have effect and the child was taken away. **Valencia Lane** commented on the amendment changes.

{Tape 2; Side A}

SEN. HALLIGAN asked if adding language would allow law enforcement officers to execute on a foreign protection order. **Valencia Lane** said the intent is to have them verify before proceeding.

SEN. HALLIGAN asked if the information isn't found within the National Crime Information Center would they not be able to execute on the order. **SEN. O'NEIL** felt language needed to be added to authorize other proper methods to be verified.

SEN. HALLIGAN thought the addition already allows the officers to obtain the information. **Valencia Lane** mentioned adding language to include "if the facts are verified by" to make contingent.

SEN. O'NEIL said his intent was to have the officers verify the information first. **Valencia Lane** felt confused about the topic of taking children away and needed clarification. **SEN. O'NEIL** pointed to page two and explained the custody and visitation of children with the orders involved.

Pam Bucy said this bill addresses custody situations. She said there is a fair faith in credit issue where orders need to be enforced. She said through this bill effectiveness of children's protection would be if there is a valid protection order finding.

SEN. O'NEIL mentioned the statement, which only covers custody if the valid order is filed within the National Crime Information Center. **CHAIRMAN GROSFIELD** understood the concerns, and he pointed out the foreign orders, which may not be from the National Crime Information Center.

Valencia Lane wondered about adding language to the amendment. She mentioned looking at Subsection one. **SEN. HALLIGAN** said this deals with the underlying domestic orders and other states are looking to put protection orders on the National Crime Information Center. **SEN. O'NEIL** felt protection orders in Montana included custody of the child. He said this bill allows an order of protection to be enforced.

Vote: Motion failed 1-6 with **SEN. O'NEIL** voting aye.

SEN. GERALD PEASE asked about the connection between the tribal courts and the bill. **Pam Bucy** said tribal courts are included under this bill. She explained the definition of state to include tribal courts.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 213 BE CONCURRED IN**. Motion carried 6-1 with **SEN. O'NEIL** voting no.

EXECUTIVE ACTION ON HB 360

Motion: **SEN. HALLIGAN** moved **HB 360 BE AMENDED**. Amendments were handed out **EXHIBIT(jus68a02)**.

Discussion:

Valencia Lane explained the amendments.

Substitute Motion: **SEN. O'NEIL** made a substitute motion to add language on line 28 adding Subsections (a), (b) and (c). He also wanted to strike language changing the consent of children under age of 16 as opposed to 13.

Discussion:

SEN. HALLIGAN stated the Sexual Abuse Statute is to prevent adults from abusing children. He felt this is already clarified

within Subsections (a), (b) and (c) and it should not be excluded. **SEN. O'NEIL** gave an example of under aged children engaging in sexual conduct.

SEN. HALLIGAN said by engaging in sexual conduct it must be with someone. **SEN. O'NEIL** pointed out Subsection (e) and felt sexual conduct could be by oneself.

{Tape 2; Side B}

Valencia Lane understood the substitute motion could be accomplished by amending the first motion. She stated sections to exempt. **SEN. O'NEIL** felt not all Subsections should be exempted, only Subsection (e).

SEN. HALLIGAN didn't think it needed to be exempted and explained a picture of a model would not be subjected to pornography in this statute. **SEN. O'NEIL** felt these people are not being caught and the substitute motion needs to be added.

Vote: Substitute motion failed 1-6 with **SEN. O'NEIL** voting yes.

CHAIRMAN GROSFIELD felt the amendment cleans this bill up. **SEN. GRIMES** asked about a site in the bill. **Valencia Lane** pointed to the section and explained the clarification.

Vote: Motion HB 360 BE AMENDED carried 6-1 with **SEN. O'NEIL** voting no.

Motion/Vote: **SEN. HALLIGAN** moved HB 360 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 434

Motion: **SEN. HALLIGAN** moved HB 434 BE AMENDED. Amendments were handed out **EXHIBIT(jus68a03)**.

Discussion:

SEN. GRIMES wondered about churches not being affiliated with in this bill. He mentioned churches were places where children would be playing with the least supervision. **SEN. HALLIGAN** said all this does is restrict the residency.

SEN. GRIMES thought there should be an addition to the bill by striking language and adding churches. **SEN. HALLIGAN** pointed to the existing sentencing statute allowing a judge to order the

restrictions. **Valencia Lane** said the concern was creating a new offense and penalties for violating the offense. She said the amendment would be a sentencing bill placing it with the sentencing statutes.

SEN. HALLIGAN felt the sentencing would be consistent. He said this would not create the separate offense. **SEN. AL BISHOP** pointed to the second page of the amendment. He wondered about subdivisions. **SEN. HALLIGAN** added if private parks were exclusive to certain areas then the police would not have jurisdiction.

Substitute Motion: **SEN. O'NEIL** made a substitute motion striking language on page 17 to page 19 and insert "at any location".

Discussion:

SEN. O'NEIL felt this addition would be good because it allows the probation of a parole officer rather than a judge to supervise.

SEN. GRIMES wondered about probation officers and how they can notify residents. He worried about the consequences involved.

SEN. HALLIGAN felt it delegates to parole officers the authority where a person may reside. He said this infringes on due process rights.

SEN. BISHOP said if parole officers would have to obtain a big building for these people to reside in. **SEN. O'NEIL** believed the due process rights were not inflicted. He said leaving the authority with the judge would not be as effective.

Vote: Substitute motion failed 7-1 with **SEN. O'NEIL** voting yes.

Vote: Motion carried unanimously.

Motion/Vote: **SEN. GRIMES** moved **HB 434 BE CONCURRED IN AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 290

Motion: **SEN. O'NEIL** moved **HB 290 BE AMENDED.** Amendments were handed out **EXHIBIT(jus68a04)**.

Discussion:

CHAIRMAN GROSFIELD talked about striking language within the bill. He felt the word deception was bothersome. He gave the definition of deception and felt unintended consequences would be in the bill with this language.

{Tape 3; Side A}

SEN. O'NEIL felt language should be taken out. He talked about the statute of limitations and gave examples of how this effects the bill. **SEN. GRIMES** wanted to segregate the amendments. He thought these were two different discussions.

Substitute Motions 1 & 2: **CHAIRMAN GROSFIELD** felt the committee should segregate the amendments dealing with the deception language first and then vote on the language of surprise.

Discussion:

SEN. GRIMES wondered if this bill dealt with sexual intercourse without consent allowing for deception. **CHAIRMAN GROSFIELD** talked about the unintended consequences associated with a former spouse or boyfriend/girlfriend.

Vote: Substitute Motion #1 STRIKING LANGUAGE OF DECEPTION FROM BILL carried unanimously.

Discussion:

SEN. O'NEIL talked about incidences the proponents testified on. He thought the language of surprise would make the offense a felony and explained felony rape against resistance.

CHAIRMAN GROSFIELD said the reason for this bill deals with situations where attorneys cannot prosecute. He said the bill further defines without consent.

Vote: Substitute Motion #2 LANGUAGE OF SURPRISE BE ELIMINATED carried 5-2 with **SEN. BISHOP** and **SEN. O'NEIL** voting no.

Motion/Vote: **SEN. GRIMES** moved HB 290 BE CONCURRED IN AS AMENDED. Motion carried 5-2 with **SEN. BISHOP** and **SEN. O'NEIL** voting no.

DISCUSSION ON HB 165

CHAIRMAN GROSFIELD explained the bill and the need for clarification. He felt this bill had too many details to work with. He thought there was concern from archeologists dealing

with this bill. He explained findings of human remains and the ability to look at tribal backgrounds.

SEN. DOHERTY appreciated the concerns and said these apply to pre 1991 findings of human remains. He said there should be an establishment of a claim for the protection of human remains to provide protection.

CHAIRMAN GROSFIELD said federal law deals with remains of funerary objects that are effected by federal money. He mentioned how the Smithsonian Museum was not applied in this bill. He said this bill deals with pre 1991 findings that are in private or public hands.

SEN. GRIMES added the acquisition of human remains are determined by a reasonable distinction. He wondered why D.N.A. could not be used to associate tribal remains and ancestors.

SEN. HALLIGAN mentioned the remains belonging to an agency or museum can be claimed by a private individual.

CHAIRMAN GROSFIELD said museum wasn't referred to as an agency and this should be consistent in the bill.

{Tape 3; Side B}

SEN. PEASE commented this bill was very important. He mentioned two incidences where this bill could assist tribes with claims of remains and the need for protection.

CHAIRMAN GROSFIELD said the bill passed in 1991, Human Skeletal Remains and Burial Site Protection Act, would protect these incidences mentioned. He said this current bill would deal with issues arising prior to 1991.

ADJOURNMENT

Adjournment: 11:40 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus68aad)